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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1969

No. 374

HAYWOOD WASHUM, an Individual, d/b/a LOS ANGELES-YUMA FREIGHT LINES, and SVENSSON FREIGHT LINES, an Arizona Corporation,
Appellants,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, CONSOLIDATED COPPERSTATE LINES, CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, HOPPER TRUCK LINES, LEE WAY MOTOR FREIGHT, INC., MILNE TRUCK LINES, INC., NAVAJO FREIGHT LINES, INC., PACIFIC MOTOR TRUCKING COMPANY, THUNDERBIRD FREIGHT LINES, INC., T. I. M. E. FREIGHT, INC., and WESTERN GILLETTE, INC.,
Appellees.

Appeal from the United States District Court for the District of Arizona.

JURISDICTIONAL STATEMENT.

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Appellees.

Appeal from the United States District Court for the District of Arizona.

JURISDICTIONAL STATEMENT.

Appellants appeal from the judgment of the United States District Court for the District of Arizona entered on April 1, 1969, affirming orders of the Interstate Commerce Commission, and submit this statement to show that the Supreme Court has jurisdiction of the appeal and that substantial questions are involved.

OPINIONS BELOW.

The opinion, consisting of two paragraphs and denominated "Order, of the U. S. District Court for the District of Arizona," from which this appeal is taken, is not, as of the time of the preparation of this statement, known to be officially reported, but is appended hereto as Appendix A, pages A-1 and A-2.

The prior opinion of the Interstate Commerce Commission, which was affirmed by the District Court, is reported in 104 M. C. C. at pages 838, etc., copy of which is hereto attached as Appendix B, pages A-3 through A-57.

JURISDICTION.

This suit was brought under Title 28, U. S. C., §§ 1336, 1398, 2284 and 2321-2325, to set aside orders of the Interstate Commerce Commission. The judgment of the District Court was entered on April 1, 1969, and Notice of Appeal was filed in that Court on May 29, 1969.

The jurisdiction of the Supreme Court to review the decision of District Court by direct appeal is conferred by 28 U. S. C., § 1253, and by the decisions of this Court in Penn-Central Merger and N. & W. Inclusion Cases, 389 U. S. 486.

QUESTIONS PRESENTED.

Whether the Interstate Commerce Commission may abandon a long-standing rule of practice before the Commission and apply to the Appellants a different rule not heretofore applied in motor carrier cases whereby the Certificates of the Appellants are revoked and the sale of a Certificate is denied, with the effect that Appellants are simply put out of business.

STATEMENT OF THE CASE.

This is a review of three proceedings below in the Interstate Commerce Commission. In order fully to understand the import of this appeal, it is necessary to consider not only each of the three cases below separately, but to consider the manner in which the three interrelate with each other so as to produce the ultimate result of which Appellants now complain.

Background Information.

Defendant, Svensson Freight Lines ("Svensson"), an Arizona corporation, has operated in interstate commerce for a number of years, first under a so-called "Second Proviso" Certificate of Registration, and subsequent to 1963, under a Certificate issued to it as a single state operator under § 206 (a) (6) of the Interstate Commerce Act. The second proviso operation was conducted for some years before Don Washum purchased an interest in that company in 1957.

In the Spring of 1957, Defendant, Don Washum, and his cousin, James Eldree Washum, each purchased 50% of the outstanding common stock of Svensson. Don Washum was Vice President of Svensson from that time until January 21, 1963, when he became President after acquiring the interest of his cousin.

On June 5, 1963, Svensson replaced its second proviso registration with a Certificate under § 206 (a) (6) and (7) of the Interstate Commerce Act. Svensson operates in interstate commerce basically between Phoenix and Yuma, Arizona.

A third respondent, Haywood Washum, and his brother, Jim Washum, were originally co-partners doing business as Los Angeles-Yuma Freight Lines by virtue of a Cer-

tificate purchased from one James N. Clint on October 1, 1956, which authorizes operations between Yuma, Arizona and Los Angeles, California. Jim Washum is the father of James Eldree Washum and Haywood Washum is the father of Don Washum.

On January 22, 1963, Jim Washum transferred all of his interest in Los Angeles-Yuma Freight Lines to Haywood Washum, and since that time he has operated that business as a sole proprietor. Haywood Washum has never been an officer in Svensson, nor has he ever been on the Board of Directors of Svensson.

Under the two Certificates described, Svensson and Los Angeles-Yuma have provided service between Los Angeles and Phoenix by means of interline since 1957.

Nature of the Proceedings Below.

The first of the proceedings here under review was a complaint action filed by certain competitors of Svensson and Los Angeles-Yuma. The crux of the complaint was that Haywood and Don Washum are collectively in joint and common control of both Svensson and Los Angeles-Yuma. The Commission so found and since that joint control was never authorized by the Commission ordered them to cease and desist.

Appellants do not now take issue with the findings of the Commission in this respect, except to state that there is no finding below nor is there evidence of record to support a finding that the actions of the two defendants, Haywood and Don Washum, in effectuating such joint control, albeit unlawfully, were in bad faith, that is to say they did not wilfully and wantonly violate § 5 of the Interstate Commerce Act.

By the time the Commission reached that conclusion, Svensson and L. A.-Yuma had been providing a transpor-

tation service to the shipping public between Phoenix and Los Angeles for well over 10 years without challenge. By virtue of the Commission's order to cease and desist, they stood to lose their entire livelihood built over many years. Further, the shippers and receivers whom they had served for many years stood to lose what apparently had been a valuable transportation service.

In an effort to rectify this situation, Svensson filed two applications before the Commission, the outcome of which are also the subject of review in this proceeding. The first was in Finance Docket No. MC-F-9618, in which Svensson sought to purchase L. A.-Yuma. Second, in Docket No. MC-96784 (Sub-No. 2), Svensson sought to convert its § 206 (a) (6) Certificate into a § 207 Certificate of Public Convenience and Necessity. If these two applications had been granted, the difficulties encountered by the two Washums would have been cured.

The extension application was heard by Joint Board No. 47 which Board also heard the complaint action and found the unlawful joint control. There, Svensson and L. A.-Yuma produced exhibits showing thousands of shipments which had been handled in the past by the two of them in interline service. They then adduced evidence from 10 public witnesses that they had been using the services of Svensson and L. A.-Yuma and that they had a need for the continuation of those services in their business.

Upon consideration of that record, Joint Board No. 47 found that the Certificate applied for by Svensson was slightly different from the Certificate which it held under § 206 (a) (6) and that for that reason it could not consider evidence of past operation as proof of convenience and necessity. Such evidence would normally be considered in a conversion case of that type. The Joint Board, later upheld by the Commission, was in error at that point because the differences between the two are so slight that

they would not have affected the transportation characteristics of a single one of the shipments involved. The Joint Board then found that the evidence of the 10 supporting public witnesses, **standing alone**, was not sufficient to justify a grant of authority, particularly in view of the fact that there was sufficient common carrier service available between Los Angeles and Phoenix to insure that the public interest would not be damaged. It also found that the application could not be a true conversion of § 206 (a) (6) to a § 207 Certificate because the original former Certificate had been void at the time it was issued in view of the fact that Svensson was under common control with L. A.-Yuma, a multi-state operator.

The findings in the two dockets discussed above then had a direct bearing upon the finding of the Examiner in Docket No. MC-F-9618. He found that inasmuch as Joint Board No. 47 had held that the § 206 (a) (6) Certificate of Svensson was invalid when it was issued, it therefore did not exist, so that the Commission then had no jurisdiction over the transaction wherein Svensson sought to purchase L. A.-Yuma. Thus, each of the proceedings in turn had a distinct bearing upon the other.

THE QUESTION IS SUBSTANTIAL.

The Matter of Unlawful Control.

The unlawful control question completely permeates this whole matter. That finding is about to deprive Haywood and Don Washum of a business which they have spent well over 10 years building, not to mention the shipping public which is about to be deprived of the good and valuable services rendered by these two carriers for that same period of years and upon which they have come to rely. It was found at the instance of competing carriers who waited over 10 years to complain and who

now expect to enjoy a windfall in the form of traffic now being handled by Svensson and L. A.-Yuma.

The joint control found to exist and to be unlawful is a technical violation of the statute. It does not exist per se, but had to be found by sifting a myriad of individual facts, some of which tended to show a common control and some of which did not.

On balance, the Commission found that more of these facts tended to show that joint control exists than tend to show that it does not. The two Washums did not consciously start out to effectuate such control and indeed were unaware that they had done so until the Commission decision in the complaint case. Thus, there was no finding of bad faith on their part.

Even though there was no finding of bad faith, the finding of unlawful control dogged their every footstep through the subsequent proceedings so that, in fact, the unlawful control finding is the basis upon which both the extension application and the § 5 purchase application were ultimately denied. It is submitted that far too much weight has been placed upon the technical violation by the Washums in the unlawful control case and that the later denial of the extension application and the § 5 purchase application predicated upon that ground was arbitrary and capricious.

THE § 206 (a) (6) CERTIFICATE SHOULD HAVE BEEN CONVERTED.

The granting of a Certificate under § 207 of the Act must be only upon strict proof of public need for it is the grant of a new Certificate which has a competitive impact on other carriers already in the field, which impact must be measured and minimized consistent with the public interest. Conversely, the conversion of a §

206 (a) (6) Certificate requires no such strict proof for the operation is already in progress under the Certificate. The conversion is in effect a mere change of form.

The Joint Board improperly held Svensson to the first and more strict measure of proof because (1) of the differences between the Certificate held and the Certificate sought, and (2) the § 206 (a) (6) Certificate must be issued to a carrier operating wholly within one state and not in common control with a multi-state carrier. In view of the joint control found by the Joint Board to exist between Svensson and L. A.-Yuma, it also found that the Certificate issued in 1963 was void at the time of issue.

Thus, the Joint Board treated the § 206 (a) (6) Certificate as if it were brand new when issued in 1963. That in fact was not true. Svensson had been the holder of what was then known as a second proviso registration for many years before Don Washum was ever connected with it. Certainly, there is no showing in this record, nor is there any finding, nor could there have been such, that the original second proviso registration held by Svensson was improperly issued by the Commission.

In 1963, the Act was changed so that a single state operator was required to exchange its registration for a Certificate. That did not require any proof of convenience and necessity. It merely required application made timely under the provisions of the statute by any carrier holding a second proviso registration whereupon the new certificate would be issued. That certificate was issued in lieu of what had been held before. It was not a new certificate, but rather was a continuation in another form of the rights which had been held by Svensson for many years.

No certificate issued by the Commission can be revoked except after proper proceedings and findings by the Com-

mission. To do so would be to deprive the holder of his property without due process of law. It was therefore not void at the time of issue as found by the Commission.

The Joint Board also held Svensson to the first and infinitely more strict quantum of proof also because it found that the § 207 Certificate requested by Svensson was not precisely the same in its wording as that which it held under registration. It is true that there are some small differences between the two. However, the documents which underlie the showing of the past performance of Svensson and L. A.-Yuma in interline service conclusively show that the differences in the two certificates would not have one ounce of material effect on the ultimate transportation service rendered on any of the involved shipments insofar as the shippers and receivers were concerned. The Joint Board hid behind a mere technicality in finding that because of these differences, it could not consider the evidence of past operations. The differences in the two certificates are differences of form and not of substance.

Svensson also produced 10 public witnesses who testified that they have been using the services of Svensson and L. A.-Yuma and that those services were needed by them. That, along with the showing of the past operations of these carriers, was more than sufficient to provide a basis for granting the extension application in view of the fact that the application simply considers an ongoing of an operation which has been in existence for many years, and not a new operation.

The Joint Board found that evidence, standing alone, to be insufficient to grant the application. The ultimate result is that the Commission has required a higher quantum of proof of Svensson than it would require of any other applicant seeking to convert a § 206 (a) (6) certificate.

THE FINAL RESULT OF THESE THREE CASES IS WHOLLY INEQUITABLE.

It is important to see who is harmed by the final outcome of these decisions; who is benefited by the final outcome; and whether the consequences which flow from these decisions are commensurate with the activities of the Appellants.

The people who stand to be infinitely harmed by these decisions are Haywood and Don Washum who will be virtually put out of business. The second group that stands to be materially harmed is the shipping public who has been using the services of these carriers through the years and who have testified that they need their continuation.

The Joint Board stated that the shipping public would continue to enjoy adequate service as provided by the complaining and protesting carriers. While that may be true, the final result of this matter will be to provide a windfall for those carriers which they do not deserve. If the findings of the Commission are correct in the complaint case, the unlawful control complained of has existed since 1957. The complaining carriers waited well over 10 years to raise the issue so that during that period of time, the competitive situation as between the complaining carriers and the defendants has fully crystallized. Any traffic which the complaining carriers might have lost by virtue of the unlawful control has long since gone and any effects that they might have suffered because of that loss has long since been sustained and forgotten. If these carriers were so indignant about this matter, and the consequences to their business were so great, it would seem that they would have raised the question long before they did and long before the competitive situation had crystallized.

The only result which can now occur is that these carriers will in effect cut up among themselves the traffic presently being enjoyed by Svensson and L. A.-Yuma, so that each will, to that extent, be the recipient of a windfall. This is a wholly and completely inequitable result in view of the lack of bad faith by the Washums and in view of the technical nature of the violation of the statute.

THE TREATMENT ACCORDED THE APPELLANTS BELOW.

The matter was presented to the Court below on a complaint which raised a number of pivotal and consequential legal questions, and at the hearing on the matter, there was before the Court, in addition to the original complaint, a motion to amend the complaint so as to present to the Court a question concerning the fairness of the proceedings before Joint Board No. 47 consisting of the Honorable E. P. ("Eddie") Williams, Jr., a former member of the Arizona Commission and a political enemy of the Washums because of their pressing bribery charges against him.

The Court below dismissed the latter charge as being not soon enough raised and dismissed the complaint concerning the proceedings before the Commission with the statement that the Court was satisfied that the Commission followed the law and based findings on evidence.

Appendix A hereto presents both paragraphs of the Court's decision.

A timely application for restraining order pending this appeal was presented and granted by the three-judge District Court, with the effect that, unless sooner dissolved, the restraining order will be in effect until decision by this Court.

As demonstrated above, the questions presented are substantial, and require plenary consideration for their resolution.

CONCLUSION.

Therefore, it is respectfully requested for the reasons herein discussed that this Court note jurisdiction to the end that this appeal be docketed for plenary review with briefs and arguments on the merits.

Respectfully submitted,

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APPENDIX.

APPENDIX A.

The United States District Court
For the District of Arizona.

Haywood Washum, et al.,
Plaintiffs,
v.
United States of America,
Defendant.
No. Civ. 6886 Phx.

Order.

(Filed April 1, 1969.)

Before: Jertberg and Browning, Circuit Judges, and Craig, District Judge.

Plaintiffs' motion for leave to amend the complaint and to adduce additional evidence is denied. The issue which plaintiffs seek to present was not submitted to the Commission, and may not be raised for the first time in this court. **United States v. Tucker Truck Lines**, 344 U. S. 33, 36-37 (1952); **United States v. Capital Transit Co.**, 338 U. S. 286, 291 (1949); **United States v. Hancock Truck Lines**, 324 U. S. 774, 778-80 (1945); **Neisloss v. Bush**, 293 F. 2d 873, 880 (D. C. Cir. 1961). Moreover, with exceptions not applicable here, our review of the Commission's order is limited to the record presented to the Commission. **Interstate Investors, Inc. v. United States**, 287 F. Supp. 374, 385-86 (S. D. N. Y. 1968), **affirmed** ... U. S. ... (1969) (No. 755 O. T. '68, Jan. 27, 1969).

Based upon our examination of the record before the Commission in the light of the authorities cited by the parties, we are satisfied that the Commission followed the law and that its findings are supported by substantial

evidence, including inferences reasonably drawn therefrom. We would not be warranted in overturning the Commission's orders simply because there is also substantial evidence in the record which would have supported findings favorable to the plaintiffs. **Consolo v. Federal Maritime Comm'n**, 383 U. S. 607, 619-21 (1966); **Illinois Central R. R. v. Norfolk & Western R. R.**, 385 U. S. 57, 66 (1966). Accordingly, the complaint is dismissed, and the temporary restraining order heretofore entered is vacated.

GILBERT H. JERTBERG,
JAMES W. BROWNING,
United States Circuit Judges;

WALTER E. CRAIG,
United States District Judge.

APPENDIX B.

MF-3049

INTERSTATE COMMERCE COMMISSION.

No. MC-F-9618

SVENSSON FREIGHT LINES—PURCHASE—HAYWOOD WASHUM

[104 M. C. C. 838]

No. MC-F-9618[1]

Svensson Freight Lines—Purchase—Haywood Washum

1. In No. MC-F-9618, application of Svensson Freight Lines for authority to purchase operating rights and certain property of Haywood Washum denied.
2. In No. MC-C-5262, defendants Haywood Washum and Don Washum, and each of them, found to be exercising control and management in a common interest of the operations of Haywood Washum, doing business as Los Angeles-Yuma Freight Lines, with the operations of defendant Svensson Freight Lines. Certificate of registration canceled. Defendant Svensson Freight Lines ordered to cease and desist operations in interstate commerce.
3. In No. MC-96784 (Sub-No. 2), public convenience and necessity found not shown to require operation by applicant as a common carrier by motor vehicle of specified commodities over regular routes between described points in Arizona. Application denied.

Pete H. Dawson for applicant in Nos. MC-F-9618 and MC-96784 (Sub-No. 2) and defendant in No. MC-C-5262.

R. Y. Schureman for protestants in Nos. MC-F-9618 and MC-96784 (Sub-No. 2) and for complainants in No. MC-C-5262.

Peter C. Byrne for defendants in No. MC-C-5262.

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[1] This report also embraces No. MC-C-5262, *Consolidated Coppérstate Lines, et al., v. Haywood Washum*, an individual d. b. a. *Los Angeles-Yuma Freight Lines, et al.*, and No. MC-96784 (Sub-No. 2), *Svensson Freight Lines Conversion Application—Arizona*.

DECISION AND ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, Commissioners *Tuggle*, *Bush*, and *Stafford* (Commissioner *Stafford* dissents), held at its office in Washington, D. C., on the 25th day of April 1968.

Upon consideration of the applications, the complaint, and the record in the above-entitled and embraced proceedings, including the report and recommended orders of Joint Board No. 47 (board) and of the hearing examiner, each served October 20, 1967,[2] the [104 M. C. C. 839] exceptions filed thereto by applicants-defendants, and the replies thereto by complainants-protestants.[3]

It appearing, That the respective findings and conclusions of the hearing examiner in No. MC-F-9618, and of the board in No. MC-C-5262, and No. MC-96784 (Sub-No. 2) are proper and correct in all material respects; that the exceptions and replies otherwise raise no new or material matters of fact or law not adequately considered and properly disposed of by the hearing examiner and the board in their respective reports; and that said excep-

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[2] These three related matters were heard on a consolidated record before a hearing examiner and Joint Board No. 47. Separate recommended orders were served. By order dated February 19, 1968, No. MC-C-5262, was assigned to division 3 for concurrent handling and disposition with this proceeding and No. MC-96784 (Sub-No. 2).

[3] Complainants in No. MC-C-5262 are Consolidated Copperstate Lines, Consolidated Freightways Corporation of Delaware, Hopper Truck Lines, Lee Way Motor Freight, Inc., Milne Truck Lines, Inc., Navajo Freight Lines, Inc., Pacific Motor Trucking Company, T. I. M. E. Freight, Inc., Thunderbird Freight Lines, Inc., and Western Gillette, Inc. Each, except Consolidated Freightways of Delaware, oppose the application in No. MC-96784 (Sub-No. 2), and each, except Consolidated Freightways and Lee Way Motor Freight, oppose the application in No. MC-F-9618. Applicants-defendants, and complainants-protestants, shall hereinafter be referred to as applicants and protestants, respectively.

tions and replies, otherwise, are not of such a nature as to require the issuance by division 3 of a report discussing the evidence in the light of such pleadings;

Wherefore, and good cause appearing therefor:

We find, That the evidence considered in the light of the exceptions and the replies does not warrant a different result from that reached by the hearing examiner and the board in their respective reports, that the statement of facts, the conclusions and the findings of the hearing examiner and the board being proper and correct in all material respects, should be, and they are hereby, affirmed and adopted as our own.

It is ordered, That, in No. MC-F-9618, the order of the hearing examiner, which would deny the application, be, and is hereby, adopted as the order of the Commission, division 3, effective 20 days after the date of service hereof;

It is further ordered, That, in No. MC-C-5262, the order of the Joint Board No. 47, which finds the applicants in violation of section 5(4) of the Interstate Commerce Act, which orders applicants to cease and desist such violation, and which finds that a certificate of registration was improvidently issued to Svensson Freight Lines, in No. MC-96784 (Sub-No. 1) on June 5, 1963, and has been invalid since that date, be, and is hereby, adopted as the order of the Commission, division 3, effective 20 days after the date of service hereof; and

It is further ordered, That, in No. MC-96784 (Sub-No. 2) the order of Joint Board No. 47, which would deny the application, be, [104 M. C. C. 840] and it is hereby, adopted as the order of the Commission, division 3, effective 20 days after the date of service hereof.

The statement of facts, conclusions and findings of Hearing Examiner Samuel C. Shoup in No. MC-F-9618 follows:

By joint application filed December 20, 1966, Svensson Freight Lines, an Arizona corporation, of Yuma, Ariz. (vendee), and Haywood Washum, doing business as Los Angeles-Yuma Freight Lines, of Yuma, Ariz. (vendor), seek authority under section 5 of the Interstate Commerce Act for the purchase by the former of the interstate operating rights set forth in appendix A hereto, of the transportation business, and of certain physical property of the latter in exchange for 1,720 shares of common voting stock of the vendee to be issued. Both vendee and vendor are motor common carriers subject to part II of the act. Their aggregate gross operating revenues exceeded $300,000 for the period of 12 consecutive months ending not more than 6 months preceding December 1, 1966, the date of agreement to sell, executed by the parties. For the year 1966, gross revenues of vendee were $276,196, and of vendor, $658,175.

The application was referred to the examiner for hearing and the recommendation of an appropriate order thereon accompanied by the reasons therefor. Hearing was held on a consolidated record with two related matters assigned for hearing before Joint Board No. 47, Nos. MC-96784 (Sub-No. 2) and MC-C-5262, described in footnote 1 above, on May 8 through 11, 1967, at Phoenix, Ariz. Each of the matters is disposed of in a separate report and recommended order. Consolidated Copperstate Lines, Hopper Truck Lines, Milne Truck Lines, Inc., Navajo Freight Lines, Inc., Pacific Motor Trucking Co., Thunderbird Freight Lines, Inc., T. I. M. E. Freight, Inc., and Western Gillette, Inc., oppose the application.

Vendee was incorporated in Arizona sometime prior to 1957. At the time of hearing, one, Donald L. Washum

owned all of its stock consisting of 430 issued shares. Vendee's directors then consisted of Donald L. Washum, president, his wife Evelyn Washum, secretary and treasurer, and Verlan Lee, vice president, who also was employed as a dock foreman by vendor. Prior to and continuously subsequent to 1957, the vendee conducted motor common carrier intrastate and interstate operations in Arizona. A certificate of convenience and necessity, No. 3857, dated August 8, 1962, was issued to vendee by the Arizona Corporation Commission. Pursuant to application filed under section 206(a)(7) of the act, as amended October 15, 1962, this certificate resulted in the issuance to vendee of a certificate of registration, No. MC-96784 (Sub-No. 1), dated June 10, 1964, the commodity and territorial scope of which is set forth in appendix B hereto. In June or July 1957, Donald L. Washum and his cousin, James Eldree Washum, each purchased 50 percent of all the issued and outstanding stock of vendee from its then owner, Gus Svensson. They borrowed funds from the First National Bank of Yuma for the down payment required by Gus Svensson and the discharge of certain tax obligations of Svensson. The promissory note which they issued to secure the loan was cosigned by Haywood [104 M. C. C. 841] Washum, father of Donald L. Washum. About January 21, 1963, James Eldree Washum withdrew from vendee and his stock was sold to and purchased by Donald L. Washum who then became its president.

By application, No. MC-96784 (Sub-No. 2) filed with the instant application and mentioned in footnote 1 above, vendee seeks motor common carrier authority corresponding in scope to some extent with that in the described certificate of registration. In a report in that proceeding served concurrently herewith, the joint board recommends denial of that application for reasons set forth therein. Evidence of vendee's past operations and testimony of 10 shippers was offered in support of both that and the

instant application. The abstracts of some 2,569 (principally less-than-truckload) shipments transported by applicant from March 1, 1966, through March 31, 1967, between Phoenix and Yuma and interlined at Yuma almost exclusively with vendor for beyond movement to or from Los Angeles and vicinity and Imperial County points, were presented to show continuous past operations proposed to be continued as single-line service if the considered application is granted. The abstracts were prepared from about 10 freight bills selected at random for each day of operation to show continuous service between points within the scope of its operating authority. However, vendee presented no evidence relating to interpretation of its State certificate which is incorporated in the certificate of registration under which the described traffic moved. The wording of the certificate of registration, without interpretation to the contrary, indicates that much of the abstracted traffic is beyond the scope of the certificate of registration. Freight bills produced in support of the abstracts did not reveal stops en route for partial unloading, and the dispatch sheets which might have disclosed this information were not made available. Pertinent testimony of the supporting shippers contains expressions of desire to use vendee's proposed single-line service, if authorized.

Vendor, with headquarters at Yuma, has conducted motor common carrier operations as a sole proprietor under two names. One is Los Angeles-Yuma Freight Lines, the business of which is the subject of transfer in the considered application, and the other is H. L. Washum & Donald L. Washum, doing business as H. L. Washum & Son, under which vendor conducts a livestock transportation business. Interstate operations under the former were conducted between Yuma and Los Angeles and other points within the scope of vendor's certificate No. MC-14045, set forth in appendix A. In connection therewith,

vendor participated in joint-line movements, principally with vendee, since the certificate was issued on June 5, 1963. Among other things, the certificate authorizes service between Yuma Test Station and San Luis as requested in vendee's Sub-No. 2 application. Haywood Washum and his brother, Jim Washum, purchased the certificated authority from one, James M. Clint, on October 1, 1956, and a certificate was issued in the partnership name on December 26, 1956. Partnership operations continued under the certificate from that time until Haywood Washum purchased his brother's interest therein on January 22, 1963, and a certificate in vendee's name was issued June 5, 1963. Since that time, vendee has continued operations under the certificate. Abstracts of 42 truckload and 897 less-than-truckload direct or interlined shipments transported by vendor from March 1, 1966, through March 16, 1967, selected in the same manner as those in the described abstracts of vendee, to show continuous [104 M. C. C. 842] operations are in evidence. Neither the vendor or vendee's president could determine from supporting transportation documents whether the abstracted shipments were picked up or delivered in vendor's or vendee's equipment.

Vendee's balance sheet as of December 31, 1966, shows assets aggregating $108,972, consisting of: Current assets of $23,936 (including cash, $643, accounts receivable, $22,216, and prepaid expenses, $1,077), fixed assets—property, less allowances for depreciation, $82,625, other deferred charges, $105, and deposits, $2,306. Liabilities were: Current liabilities, $51,662 (including accounts payable, $:2,999, accrued taxes, $2,113, notes payable, $17,126, accrued insurance and vacation pay, $3,568, and long-term debt due within 1 year, $5,856), deferred liabilities, $4,543, capital and surplus (430 shares par value $100), $43,000, and earned surplus, $9,767. Its income statement for 1966 shows operating revenue, $276,197, operating ex-

penses, $263,743, officers salaries, $10,800, and net profit, $1,654.

Vendor's balance sheet as of December 31, 1966, shows assets aggregating $206,719, consisting of: Current assets, $63,555 (including cash, $5,291, accounts receivable, $49,784, and prepaid expenses, $8,480), fixed assets, $137,539 (including revenue equipment less allowance for depreciation, $62,881, buildings less allowance for depreciation, $32,951, office furniture and fixtures less allowance for depreciation, $6,707, land, $4,000, and franchise and permits, $31,000), and other assets, $5,625. Liabilities were: Current liabilities, $92,437 (including accounts payable, $43,761, accrued taxes and expenses, $17,068, equipment and other obligations—current $31,608), deferred liabilities, $46,450, capital account (reflecting a 1966 loss of $4,806), $67,832.

Vendor's income statement for 1966 shows operating revenue $658,175, operating expenses, $662,981, and operating loss, $4,806. Book value of vendor's revenue equipment to be transferred, before allowances for depreciation, is represented as (a) 15 truck tractors (5 have a $17,000 unpaid balance due thereon, payable $900 monthly under terms of a conditional sales contract), $125,510, (b) 35 trailers, $84,453, (c) 12 delivery trucks, $32,012, (d) miscellaneous equipment, $2,626, (e) service cars, $4,040, and (f) garage equipment, $2,778, or a total of $251,419.

Under terms of the aforementioned agreement to sell, the vendor's accounts receivable, cash bonds or deposits, prepaid insurance, and fees are to be assigned to the vendee subject to all accounts payable which vendee agrees to assume and pay. The certificate, motor vehicles, and other property to be transferred are represented as merchantable, free and clear of all liens except those appearing in vendor's balance sheet which liabilities vendee is to assume and pay. The transfer of property with

the necessary execution of instruments is to become effective as of the last day of the month following approval of the transfer by the Commission or other regulatory authority. If the application is granted, even though vendor retains the principal stock ownership in vendee, the vendor expects to retire, because of ill health since 1962, from active participation in the trucking business. Donald L. Washum expects to continue as manager and president of vendee. All personnel of the vendor is to be retained under the proposal and, in addition, a safety engineer and a traffic manager are expected to be employed. The same terminals and facilities there are expected to be used.

[104 M. C. C. 843] Operations of vendor and vendee, in many respects, are closely related. Vendee's president is the son and only child of vendor. The joint headquarters of both is maintained at Yuma in the same building. Both use the same dock and shop facilities there. The father and son occupy the same double desk and office when conducting their respective operations. Since 1962, vendor has been in ill health, as noted, and his son has authority to sign vendor's checks in emergencies. The son also sometimes handles transportation business for his father. Vendor's office manager usually signs checks of that carrier. Two tractors and five trailers leased by vendor to vendee are maintained at Yuma by three mechanics employed by the vendor. Other equipment used by the vendee is maintained at Yuma by one mechanic which vendee employs there. Both have pickup and delivery equipment in operation in the Yuma area. The equipment there is used interchangeably for transportation of both vendor's or vendee's traffic depending upon operating convenience. Interline bills are never cut in connection with the rendering of such pickup and delivery service. A teletype system in operation between Los Angeles, Yuma, and Phoenix is used by both. A joint insurance

policy is maintained by both and premiums are prorated on a mileage basis. Since 1957, they have maintained joint-through rates published in Interstate Freight Carrier's Conference tariffs covering movements between Los Angeles and Phoenix and various intermediate and off-route points. Health, welfare, and pension funds payments to labor unions are paid by vendor who receives a refund on a prorated basis from vendee. Separate payrolls are maintained by the carriers. Drivers are used interchangeably by both and are transferred from the payroll of one to the other. Both vendee and vendor solicit interline traffic for movement over their lines between Los Angeles and Phoenix and intermediate and off-route points. On May 3, 1963, an application signed by vendor was filed with the Arizona Corporation Commission requesting renewal of certificate No. 5541 of H. L. Washum and Donald L. Washum, doing business as H. L. Washum & Son. Nevertheless, vendor represents that his son has never held any interest in H. L. Washum & Son. Vendee further represents that he has never been a director of vendee, that he has not issued orders to vendee, that he has never taken suggestions from vendee, and that the traffic which vendor interlines with vendee is no different than that of other interline carriers. Also on July 12, 1964, Donald L. Washum addressed a letter to a Los Angeles law firm relative to an inquiry respecting the possible purchase of involved operating rights which in part is as follows:

> We have a combination of companies which is now serving points between Los Angeles and Phoenix, Arizona. This consists of "Washum Bros.," a cattle company, "Los Angeles Yuma Freight Lines" and "Svensson Freight Lines." LA-Yuma has two California Intrastate Permits and its I. C. C. Permit serving LA to Yuma and all intermediate points including Calexico, California. Svensson is an intrastate carrier with ICC Registrations serving points between Yuma and Phoenix.

Protestants are general commodity motor common carrier competitors of vendor and vendee. Seven hold authority to provide service between Los Angeles and Phoenix over routes through El Centro and Wickenburg. Four [104 M. C. C. 844] operate over the involved routes between Los Angeles and Phoenix, through Yuma, El Centro, and Indio. Three are authorized to serve all intermediate points and certain off-route points along the routes, and two hold more limited intermediate and off-route point authority. One holds authority to operate between Yuma and Phoenix with service at all intermediate points. Generally, these carriers perform overnight daily scheduled service 5 days each week over the described routes between Phoenix and Los Angeles, between Yuma and Phoenix, and between Yuma and Los Angeles. At least one of them provides a scheduled service between those points 6 days each week. They oppose the application because authorization of the proposal would authorize a new single-line competitive service, because the operations of vendee over the involved routes are of doubtful authenticity, and because they believe applicants operations are being conducted by vendor and vendee under common control in a common interest in violation of section 5(4) of the act. In the event that vendee's certificate of registration is terminated and its Sub-No. 2 application denied in the proceedings assigned to the joint board relating hereto, they have no objection, under section 212(b) of the act, to authorization of transfer of vendor's certificate to Svensson Freight Lines, an Arizona intrastate carrier.

Discussion and conclusions.—The vendor and vendee may, under section 5 of the act, seek the Commission's approval of the purchase and merger of the motor carrier certificate and properties of the former into the latter. They have filed such an application. As noted, the interstate operating authority of the vendee consists of a cer-

tificate of registration. Such a certificate, under section 206(a)(6) and (7) of the act, is valid only so long as the holder is engaged in operations solely within a single State and is not controlled by, controlling, or under common control with a multiple-State carrier. Compare *T. I. M. E. Freight, Inc.—Merger*, 97 M. C. C. 310, 323. If, upon consideration of evidence presented in the application, the proposal is found consistent with the public interest, an order approving it could be entered, and the transaction consummated. However, in such event, the vendee, holding multiple-State authority, would be ineligible under provisions of section 206(a) to operate under its certificate of registration. An alternate course is provided in section 207 of the act for the issuance of a certificate to any qualified applicant therefor, if there is a finding, among other things, that the proposed service is or will be required by the present and future convenience and necessity. An application to enable such finding, No. MC-96784 (Sub-No. 2) requesting commodity and territorial authority somewhat similar in scope to that contained in the certificate of registration, is presently the subject of a recommended joint board report served concurrently herewith. The board therein recommends denial of the application. Therefore, if this recommendation is sustained, an authorization of the considered section 5 proposal would be inappropriate and without statutory jurisdictional support.

Presented here, for consideration with the above circumstance, is the issue of common control by Haywood Washum and his son, Donald L. Washum, of the applicants' operations. This issue is the subject of determination by the joint board in the No. MC-A 3262 complaints proceeding. The board, in its report in that proceeding served concurrently herewith, among other things, found that Haywood Washum and Don Washum have exercised continuously since July 1957, control and

management in a common interest of operations of [104 M. C. C. 845] vendor (a multiple-State carrier) with the operations of vendee (a single-State motor common carrier operating under a certificate of registration) in violation of section 5(4) of the act. This finding raises the question of whether such unauthorized control, which might warrant enforcement action by the Commission, bars authorization of the proposal. Such control does not bar such authorization and the issuance of a certificate of convenience and necessity if a public need for its continuance exists. See *Victory Coach Lines, Inc.—Pur.—Indiana Motor Bus Co.*, 45 M. C. C. 575, 586. However, there is no showing here that the volume of traffic available for movement between the involved points, or the evidence of need, are sufficient to support the single-line service which vendee expects to render, particularly in face of the abundant service provided by the protesting carriers. Moreover, there is some indication here that perpetuation of the vendee's past operations by authorization of the proposal will impair protestants' ability to render adequate future service between the involved points. The finding of the board respecting unauthorized common control and management of the applicants' operations is amply supported by the evidence. These conclusions afford reasonable justification for a denial of the application. Further consideration of other issues raised by the application, therefore, becomes unnecessary.

ULTIMATE FINDINGS AND ORDER

Upon all the evidence of record, the examiner finds that the transaction has not been shown to be consistent with the public interest, and that the application, accordingly should be denied.

APPENDIX A

Certificate of Public Convenience and Necessity

No. MC-14045

HAYWOOD WASHUM, DOING BUSINESS AS LOS ANGELES-YUMA FREIGHT LINES, YUMA, ARIZONA

Regular routes:

General commodities, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment,

Between Los Angeles, Calif., and Yuma, Ariz., serving all intermediate points, and the off route points of Calexico, Calif., points in the Los Angeles and Los Angeles Harbor, Calif., Commercial Zones, as defined by the Commission and those in that part of California bounded by a line beginning at the eastern boundary of the Los Angeles, Calif., Commercial Zone, and extending easterly along U. S. Highway 66 to San Bernardino, Calif., thence along California Highway 18 to Corona, Calif., thence along U. S. Highway 91 to junction California Highway 18 (formerly portion U. S. Highway 91), thence along California Highway 18 through Olive, Calif., [104 M. C. C. 846] to junction U. S. Highway 101, thence along U. S. Highway 101 to junction California Highway 55, thence along California Highway 55 to junction Alternate U. S. Highway 101 to the eastern boundary of the Los Angeles Harbor, Calif., Commercial Zone, and thence along the eastern boundaries of the Los Angeles and Los Angeles Harbor, Calif., Commercial Zones to the point of beginning, including points on the indicated portions of the highways specified.

From Los Angeles over U. S. Highway 99 to El Centro, Calif., thence over U. S. Highway 80 to Yuma, and return over the same route.

Irregular Routes:

General Commodities, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment,

Between Yuma, Ariz., on the one hand, and, on the other, points in Arizona within 30 miles of Yuma.

APPENDIX B

Certificate of Registration

No. MC 96784 (Sub-No. 1)

(This certificate of registration supersedes the notice of intent to engage in transportation in interstate or foreign commerce on file in No. MC 96784.)

SVENSSON FREIGHT LINES, A CORPORATION, YUMA, ARIZONA

APPENDIX CONTAINING SCOPE OF AUTHORITY

Description of the transportation service authorized to be conducted solely within the State of Arizona, in intrastate commerce, as a common carrier by motor vehicle, pursuant to Certificate of Convenience and Necessity No. 3857, dated August 8, 1962, issued by the Arizona Corporation Commission:[1]

[1] Arizona Certificate No. 3857, dated August 8, 1962, is now conditioned to expire on December 31, 1971. If such certificate is renewed or reissued, a copy of each renewal order, duly certified by an appropriate official of the State Commission shall be filed by the holder thereof with the Interstate Commerce Commission in Washington, D. C., within 30 days after the date of service of the renewal order. The holder hereof is cautioned that if the Arizona Corporation Commission does not renew the intrastate

(1) Freight between Yuma and Roll serving Wellton, Arizona.

(2) GENERAL COMMODITIES over U. S. Highway 80, between Roll, Arizona and the area generally known as the Mohawk Valley or more particularly [104 M. C. C. 847] defined as that area embraced by a line beginning at the Western boundary of Range 17 West, at the north line of township 9 South; extending North to the South line of Township 6 South; thence East to the West boundary of Range 12 West; thence South to the North boundary of Township 9 South; thence West to the point of beginning and Phoenix, Arizona, and return, except that no service may be rendered between Phoenix and Yuma and intermediate points on U. S. Highway 80 except that on truckload lots a split delivery may be made when a portion of the load is destined to points in Roll and the Mohawk Valley area and the balance of the load at Yuma. Freight between Yuma and Hyder and a radius of 25 miles thereof of Hyder.

(3) SEED and GRAIN from the farms in the area now served by applicant to Phoenix, Arizona excepting farm products from Yuma, Arizona.

(4) SEED and GRAIN from the warehouse of carrier in Wellton, Arizona to Phoenix, Arizona.

(5) GENERAL COMMODITIES, EXPRESS & FREIGHT as a line haul carrier between Yuma Test Station and San Luis, Arizona, serving all intermedi

operating rights embraced in Certificate No. 887, or when renewed, if a certified copy of each renewal order is not filed with this Commission as required above, his right to engage in interstate or foreign commerce, as evidenced by a Certificate of Registration issued in this proceeding, shall terminate on the 180th day after the expiration date of the intrastate rights covered by the last order of the Arizona Corporation Commission properly on file with this Commission."

ate points on Arizona State Highway 95, limited to commodities originating from or destined to points and places outside of the area requested. RESTRICTION: No shipments shall be transported which originate and terminate on State Highway 95, and excluding from the rights granted herein on State Highway 95, liquids in bulk in tank truck vehicles, machinery and construction materials in excess of 2000 pounds per shipment household goods and Class "A" and "B" explosives.

The statement of facts, conclusions, and findings of Joint Board No. 47[1] in No. MC-C-5262 follows:

Consolidated Copperstate Lines (Consolidated Copperstate), Consolidated Freightways Corporation of Delaware (Freightways), Hopper Truck Lines (Hopper), Lee Way Motor Freight, Inc. (Lee Way), Milne Truck Lines, Inc. (Milne), Navajo Freight Lines, Inc. (Navajo), Pacific Motor Trucking Company (PMT), T. I. M. E. Freight, Inc. (T. I. M. E.), Thunderbird Freight Lines, Inc. (Thunderbird) and Western Gillette, Inc. (Western Gillette), by Complaint filed August 12, 1966, allege that defendants Haywood Washum, an individual doing business as Los Angeles-Yuma Freight Lines (LAY), Svensson Freight Lines, a corporation (Svensson), and Don Washum are regularly and frequently engaged in motor common carrier operations between Los Angeles, Calif., and Phoenix, Ariz., without first having obtained appropriate operating authority from the Commission authorizing such service, all in violation of section 206, and subdivisions thereof, of the Interstate Commerce Act (act). The complainants further allege that the defendants Haywood Washum and

[1] The State of California has waived its right to participate in this proceeding, as the joint board member from that State failed to appear at the hearing.

Don Washum, and each of them, have exercised for a period of at least 2 years last past, and continue to exercise, control and management in the common interest of the operations of LAY with the operations of the defendant Svensson, all in violation of sec- [104 M. C. C. 848] tion 5(4) of the act. Also, the complainants assert that by reason of the alleged common control and management of defendants Haywood Washum and Don Washum, and each of them, over the multi-State operations of Haywood Washum conducted pursuant to the certificate of public convenience and necessity issued to him under Section 207 of the act, and the single-State operations of the defendant Svensson continuing over a period of at least 2 years last past from the date of filing of the complaint, that the certificate of registration of Svensson has been terminated under the provisions of section 206(a)(6) and (7) of the act. Complainants pray that the Commission issue its order (A) declaring that the certificate of registration of Svensson has been terminated by operation of law under the provisions of section 206(a)(6) and (7) of the act; (B) ordering and directing the defendants, and each of them, to cease and desist from operating in interstate or foreign commerce between Yuma and Phoenix, Ariz., as a motor common carrier without first having obtained from this Commission a certificate of public convenience and necessity authorizing such operations pursuant to section 207 of the act; and (C) ordering and directing the defendants Haywood Washum and Don Washum, and each of them, to cease and desist from all control or management, whether directly or indirectly, in the common interest of the operations of the defendants Svensson and LAY.

By application filed in docket No. MC-F-9618 (Finance Proceeding), Svensson seeks an order authorizing it to purchase the operating rights and properties of LAY. By application filed December 20, 1966, in docket No. MC-96784 (Sub No. 2), (Certificate Proceeding) Svensson seeks

a certificate of public convenience and necessity from the Commission authorizing it to transport general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment), (a) between Phoenix and Yuma, Ariz., over U. S. Highway 80 (with service authorized to or from all intermediate points between Theba and Yuma, Ariz., including Theba and Yuma, and off-route points of Roll, Dome, Hyder, and Agua Caliente, Ariz.); and (b) between Yuma Test Station and San Luis, Ariz., over U. S. Highway 95 (with service authorized to or from all intermediate points).

The Complaint and Certificate Proceedings were assigned to Joint Board No. 47 and the Finance Proceeding to Examiner Samuel C. Shoup for hearing and the recommendation of appropriate orders thereon. All of the proceedings were heard on a consolidated record before Joint Board No. 47 and Examiner Samuel C. Shoup on May 8 to May 11, 1967. The Finance and Certificate Proceedings will be the subject of a separate report or reports.

STATEMENT OF FACTS

Svensson Freight Lines, an Arizona corporation, has been engaged as a motor common carrier in Arizona intrastate commerce, and interstate and foreign commerce, continuously for a period of years dating back prior to 1957. Until the amendment to section 206(a)(6) and (7) of the act, effective October 15, 1962, it conducted such operations under the exemption established in section 206(a)(6) of the act, and since June 5, 1963, it has conducted interstate and foreign operations under a certificate of registration issued to it in docket No. MC 96784 (Sub No. 1), pursuant to the provisions of section 206(a)(6) and (7) of the act.

[104 M.C.C. 849] In June or July 1957, the defendant Don Washum and his cousin James Eldrice Washum each

purchased 50 per cent of all of the issued and outstanding stock of the defendant Svensson from its previous shareholder Guss Svensson. Funds were borrowed from the First National Bank of Yuma to meet the down payment required by Guss Svensson to discharge certain pressing obligations of Svensson. The note issued by James Eldree Washum and Don Washum to the First National Bank of Yuma was consigned by the defendant Haywood Washum, father of the defendant Don Washum.

The defendant Haywood Washum and his brother Jim Washum were copartners doing business as Los Angeles-Yuma Freight Lines. They purchased a certificate of public convenience and necessity issued in docket No. MC 14045 from one James M. Flint, which purchase was consummated on October 1, 1956. Jim Washum is the father of James Eldree Washum. On January 22, 1963, Jim Washum transferred all of his interest in Los Angeles-Yuma Freight Lines to Haywood Washum and since that date Haywood Washum has held the certificate issued in docket No. MC 14045 as a sole proprietor. At about the same time that defendant Haywood Washum, acquired the interest of his brother in LAY, the defendant, Don Washum, acquired the stock interest of his cousin James Eldree Washum in Svensson. Thus, since on or about January 21, 1963, the certificate of LAY has been held by Haywood Washum as a sole proprietor and all of the issued and outstanding stock of Svensson has been held by his son Don Washum. Defendant Don Washum was a vice president of Svensson continuously from June or July 1957 to on or about January 21, 1963, when he became president of the corporation upon acquiring the interest of his cousin. He has continued to be president of Svensson since on or about January 21, 1963.

The LAY certificate issued in docket No. MC 14045, attached hereto as "appendix A," authorizes the transpor

tation of general commodities, with specified exceptions, between Los Angeles, Calif., and Yuma, Ariz., including certain intermediate and off-route points. The Svensson certificate of registration, attached hereto as "appendix B", authorized the transportation of general commodities between various points and places in the State of Arizona. Included within its operating authority is authority to transport truckload lots from Phoenix to Yuma, Ariz., when a portion of the load is destined to points in Roll and the Mohawk Valley area, as described in the certificate of registration. The Mohawk Valley area and Roll are located between Phoenix and Yuma, Ariz.

Since July 1957, the defendant, Svensson, has provided a continuous and regular service in the transportation of general commodities in interstate or foreign commerce between Yuma and Phoenix, Ariz., in both directions. This traffic has been handled almost exclusively in interline service with LAY. Traffic handled in interline service between Svensson and LAY has consisted predominately of traffic originating at or destined to Los Angeles, Calif. This has resulted in a joint line service between Phoenix, Ariz., and Los Angeles, Calif.

Since July 1957, both LAY and Svensson have utilized a joint terminal at Yuma, Ariz., for the conduct of their operations. The terminal of LAY in Los Angeles, Calif., has been utilized by it exclusively in its own operations. Svensson has continuously maintained a terminal in Phoenix, Ariz., since [104 M. C. C. 850] at least July 1957. The present joint Yuma terminal of defendant Svensson and LAY is owned by Haywood Washum and his wife though prior to 1963 Haywood Washum and his wife owned the property jointly with Jim Washum and his wife.

Both Svensson and LAY maintain a telephone listing in the Phoenix Metropolitan Classified Telephone Directory which is the same number. Svensson and LAY main-

tain different telephone listings in the Yuma-Winterhaven-Somerton Classified Telephone Directory, but that said directory shows the Svensson telephone number as the one to be called in Phoenix, Ariz. (sic) to reach LAY and H. L. Washum & Son. H. L. Washum & Son is a carrier engaged in the transportation of cattle in Arizona intrastate commerce pursuant to a certificate issued to it by the Arizona Corporation Commission. A certified application for renewal of the certificate filed by Haywood Washum with the Arizona Corporation Commission on May 2, 1963, reflects that the operation is a copartnership consisting of H. L. Washum and Donald L. Washum (defendants herein).

From 1957 to the date of hearing on the Complaint herein, Svensson has conducted its operations, in part, with motor vehicle equipment leased from LAY. Where there has been sufficient traffic, through trailers owned by LAY have been utilized between Phoenix, Ariz., and Los Angeles, Calif., to provide through service, otherwise the traffic has been rehandled at the Yuma joint terminal facility. Ninety-five percent of the traffic interlined by LAY at Yuma, Ariz., has been with Svensson, and pickups and deliveries have been and are made in the Yuma area interchangeably with the pickup and delivery equipment of each depending upon their respective operating convenience. Svensson and LAY have maintained a single teletype system between Phoenix, Ariz., and Los Angeles, Calif., with teletype facilities also at Yuma, Ariz., in their joint terminal. At all times since August 26, 1957, the defendants Svensson and LAY (including the prior partnership of Haywood Washum and Jim Washum) have maintained a master policy of insurance covering the operations of Svensson, LAY, and H. L. Washum & Son (including the predecessor partnership Washum Brothers). Don Washum and his father Haywood Washum have utilized one desk at Yuma, Ariz., for the conduct of the oper-

ations of Svensson and LAY though each have separately employed office and dock personnel. Since approximately 1957 Svensson and LAY have maintained joint through rates in the tariffs of the Interstate Freight Carriers' Conference on traffic moving between Los Angeles, Calif., and Phoenix, Ariz., and various intermediate and off-route points. Also, both Svensson and LAY, for a number of years, have utilized common shop facilities at their joint terminal in Yuma, Ariz.

On February 4, 1963, the defendant Svensson filed a BOR 99 Application with the Commission, verified by the defendant Don Washum, as its president, for a "grandfather" certificate or registration in docket No. MC 96784 (Sub No. 1). The appendix "A" to the BOR 99 Application listed one Verlan Lee as vice president of Svensson. Verlan Lee now serves as the dock foreman of LAY though he continues to be the vice president of Svensson.

On January 12, 1964, the defendant Don Washum addressed a letter to a Los Angeles law firm offering to dispose of the Svensson and LAY operations and operating properties. The letter is on the stationery of Washum Brothers [104 M. C. C. 851] and Los Angeles-Yuma Freight Lines. The second paragraph thereof is particularly pertinent to the within-Complaint Proceeding. It reads as follows:

> "We have a combination of companies which is now serving points between Los Angeles and Phoenix, Ariz. This consists of 'Washum Bros.' a cattle company, 'Los Angeles-Yuma Freight Lines' and 'Svensson Freight Lines.' LA Yuma has two California Intrastate Permits and its ICC Permit serving LA to Yuma and all intermediate points including Calexico, California. Svensson is an intrastate carrier with ICC Registrations serving points between Yuma & Phoenix."

858] motor vehicle, pursuant to Certificate of Convenience and Necessity No. 3857, dated August 8, 1962, issued by the Arizona Corporation Commission:[1]

(1) FREIGHT between Yuma and Roll serving Wellton, Arizona.

(2) GENERAL COMMODITIES over U. S. Highway 80, between Roll, Arizona and the area generally known as the Mohawk Valley or more particularly defined as that area embraced by a line beginning at the Western boundary of Range 17 West, at the north line of township 9 south; extending North to the South line of Township 6 South; thence East to the West boundary of Range 12 West; thence South to the North boundary of Township 9 South; thence West to the point of beginning and Phoenix, Arizona, and return, except that no service may be rendered between Phoenix and Yuma and intermediate points on U. S. Highway 80 except that on truckload lots a split delivery may be made when a portion of the load is destined to points in Roll and the Mohawk Valley area and the balance of the load at Yuma. Freight between Yuma and Hyder and a radius of 25 miles thereof of Hyder.

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[1] Arizona Certificate No. 3857, dated August 8, 1962, is now conditioned to expire on December 31, 1971. If such certificate is renewed or reissued, a copy of each renewal order, duly certified by an appropriate official of the State Commission shall be filed by the holder thereof with the Interstate Commerce Commission in Washington, D. C., within 30 days after the date of service of the renewal order. The holder hereof is cautioned that if the Arizona Corporation Commission does not renew the intrastate operating rights embraced in certificate No. 3857, or when renewed, if a certified copy of each renewal order is not filed with this Commission as required above, his right to engage in interstate or foreign commerce, as evidenced by a Certificate of Registration issued in this proceeding, shall terminate on the 180th day after the expiration date of the intrastate rights covered by the last order of the Arizona Corporation Commission properly on file with this Commission.

(3) SEED and GRAIN from the farms in the area now served by applicant to Phoenix, Arizona excepting farm products from Yuma, Arizona.

(4) SEED and GRAIN from the warehouse of carrier in Wellton, Arizona to Phoenix, Arizona.

(5) GENERAL COMMODITIES, EXPRESS & FREIGHT as a line haul carrier between Yuma Test Station and San Luis, Arizona, serving all intermediate points on Arizona State Highway 95, limited to commodities originating from or destined to points and places outside of the area requested. RESTRICTION: No shipments shall be transported which originate and terminate on State Highway 95, and excluding from the rights granted herein on State Highway 95, liquids in bulk in tank truck vehicles, machinery and construction materials in excess of 2000 pounds per shipment household goods and Class "A" and "B" explosives.

The statement of facts, conclusions and findings of Joint Board No. 47[2] in No. MC-96784 (Sub-No. 2) follows:

[104 M. C. C. 859] By application filed December 20, 1966, Svensson Freight Lines, a corporation of Yuma, Ariz., seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle, over regular routes, of general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment), (a) between Phoenix, Ariz., and Yuma, Ariz., over U. S. Highway 80 (service is authorized to or from

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[2] The State of California has waived its right to participate in this proceeding, as the joint board member from that State failed to appear at the hearing.

all intermediate points between Theba, Ariz., and Yuma, Ariz., including Theba and Yuma, and off-route points of Roll, Dome, Hyder, and Agua Caliente, Ariz.), and (b) between Yuma Test Station, Ariz., and San Luis, Ariz., over U. S. Highway 95 (service is authorized to or from all intermediate points).

The application was referred to Joint Board No. 47 for hearing and the recommendation of an appropriate order thereon. Hearing was held on a consolidated record with two related matters, Nos. MC-F-9618 and MC-C-5262, described in footnote 1 above, on May 8 through 11, 1967, at Phoenix, Ariz. No. MC-C-5262 was assigned for hearing before Joint Board No. 47, and No. MC-F-9618 before an examiner. Separate reports will be served in each of the proceedings. Consolidated Copperstate Lines, Hopper Truck Lines, Lee Way Motor Freight, Inc., Milne Truck Lines, Inc., Navajo Freight Lines, Inc., Pacific Motor Trucking Co., Thunderbird Freight Lines, Inc., T. I. M. E. Freight, Inc., and Western Gillette, Inc., oppose the application. Protestants are hereinafter referred to by appropriate short titles. Lee Way presented no evidence.

Applicant, a motor common carrier owned entirely by Donald L. Washum, holds a certificate of registration dated June 10, 1964, containing authority somewhat similar to that requested in the instant application. It was derived from an intrastate Arizona certificate of convenience and necessity, No. 3857, dated August 8, 1962, registered, in No. MC-96784, with the Commission under section 206 (a) of the Interstate Commerce Act, and latter converted to a certificate of registration, No. MC-96784 (Sub-No. 1), pursuant to the October 15, 1962, amendment to that section. The certificate of registration authorizes interstate or foreign transportation of:

(1) Freight between Yuma and Roll serving Wellton, Ariz.

(2) General commodities over U. S. Highway 80, between Roll, Ariz., and the area generally known as the Mohawk Valley or more particularly defined as that area embraced by a line beginning at the Western boundary of Range 17 West, at the north line of township 9 South; extending North to the South line of Township 6 South; thence East to the West boundary of Range 12 West; thence South to the North boundary of Township 9 South; thence West to the point of beginning and Phoenix, Ariz., and return, except that no service may be rendered between Phoenix and Yuma and intermediate points on U. S. Highway 80 except that on truckload lots a split delivery may be made when a portion of the load is destined to points in Roll and the Mohawk Valley area and the balance of the load at Yuma. Freight between Yuma and Hyder and a radius of 25 miles thereof of Hyder.

(3) Seed and grain from the farms in the area now served by applicant to Phoenix, Ariz., excepting farm products from Yuma, Ariz.

[104 M. C. C. 860] (4) Seed and grain from the warehouse of carrier in Wellton, Ariz., to Phoenix, Ariz.

(5) General commodities, express and freight as a line-haul carrier between Yuma Test Station and San Luis, Ariz., serving all intermediate points on Arizona State Highway 95, limited to points and places outside of the area requested.

Restriction: No shipments shall be transported which originate and terminate on State Highway 95, and excluding from the rights granted herein on State Highway 95, liquids in bulk in tank truck vehicles, machinery and construction materials in excess of 2000 pounds per shipment household goods and classes "A" and "B" explosives.

The described certificate under provisions of section 206 (a) of the act is valid only so long as the holder is

a carrier engaged in operation in a single State not controlled by, controlling, or under a common control with a carrier engaged in operation outside such State, so long as the corresponding State certificate is not terminated, suspended, restricted in scope, or transferred apart from the interstate or foreign rights. Applicant has performed interstate or foreign service under the authority between Yuma and Phoenix, and between Phoenix and San Luis, in which a portion of each truckload was represented as picked up or delivered at Roll or a Mohawk Valley point.

Two abstracts, an original and a supplement, revealing some 2,569 shipments, principally less-than-truckload, transported by applicant from March 1, 1966, through March 31, 1967, from and to involved points such as Yuma, Phoenix and vicinity, Los Angeles and vicinity, and those in Imperial County, Calif., are in evidence. Copies of applicant's freight bills were produced at the hearing to support the abstracts, but dispatch sheets which might have shown drops in transit were not made available, and pertinent information respecting partial deliveries en route could not be ascertained from the freight bills. The abstracts were prepared from 8 to 10 freight bills selected at random for each day of operation to show continuous service between Phoenix and Yuma. They reveal the date of shipment, applicant's bill number, the interstate carrier's bill number (in this instance Los Angeles-Yuma Freight Lines hereinafter called LA-Yuma), the weight, and the interline point, Yuma. Each shipment shown has a different consignee and a different consignor and each was handled as an individual shipment.

Applicant expresses some uncertainty as to the authorized scope of authority set forth in its certificate of registration even though in the past, apparently, it has been the subject of certain undisclosed interpretative Arizona litigation. It presented no evidence to show the Arizona

interpretation, if any, of its certificate of registration. Applicant maintains a Yuma terminal used jointly by it and LA-Yuma. The latter, a motor common carrier operating between Los Angeles and Yuma, with whom applicant interlines freight, is owned by Haywood Washum, father of Donald L. Washum. Applicant owns and operates 2 tractors, 11 pickup trucks, and 5 trailers, and leases 2 tractors and 5 trailers from LA-Yuma, all used in its transportation business. It employs one mechanic at Yuma who maintains equipment of applicant at that point.

Applicant's financial statement, as of December 31, 1966, shows assets, $108,972, including current assets, $23,936, fixed assets, $82,626, and other [104 M. C. C. 861] assets, $2,410, and liabilities including current liabilities, $51,662 (including among other items, $12,126 owed to Donald L. Washum and $2,500 equipment obligations due within 1 year), deferred liabilities, $4,543, capital stock, $43,000, and earned surplus $9,767. Its profit and loss statement for 1966 shows net profit from operation, $1,653.

SHIPPER'S EVIDENCE

A customs broker with offices and warehouse facilities at San Luis, Ariz., and Calexico, Calif., handles customs clearances, advises, and arranges transportation for about 100 Mexicans and an undisclosed number of persons at Calexico. He receives all types of merchandise moving from or through Phoenix, Ariz., to San Luis and Calexico into Mexico, and also receives shipments moving from Mexico into the United States. If the persons served have no transportation for crossing the international boundary lines at San Luis or Calexico he provides licensed trucks for that purpose. Most of his traffic moves across the boundary line in truck equipment of the consignees or consignors. The broker receives daily shipments totaling about 10,000 pounds which move from Phoenix to San Luis. He routes more than 50 percent of this traffic and

uses applicant principally for such movements because of its daily morning delivery service at San Luis enabling sameday boundary crossings. The broker is aware that Western Gillette provides daily service 5 days each week between San Luis and Phoenix, with afternoon deliveries at San Luis, and the service of that carrier is used daily out of San Luis. The broker makes no complaint respecting this carrier's service, but says applicant renders a better service. The specific amount of traffic handled by the broker involving movements to or from points beyond Arizona, other than in private carriage, is undisclosed.

A San Luis, Sonora, Mexico, well driller each month receives about three shipments of drilling mud and pipe from Phoenix which are transported by applicant to San Luis. The broker usually telephones the shipper upon arrival of shipments at San Luis, and 90 percent of the shipments are picked up by the shipper in his own trucks. In other instances, delivery is effected in the broker's trucks, for which a handling charge is made. The shipper expresses need for daily expedited transportation which applicant has provided from Phoenix and indicates he would continue using applicant's service if the application is granted. The shipper presently uses Western Gillette for movements from Los Angeles, where most of his traffic originates, to San Luis. The shipper uses none of this carrier's service for movements from Phoenix to San Luis.

A citrus farm management company at Tacna, Ariz., 42 miles east of Yuma in the Mohawk Valley area, receives an average of three shipments of commodities used in farming, each week, which originate at points in California. About 3 percent of its inbound traffic originates in Eastern States and is not controlled by the management company. The shipments from California are transported to Yuma by Los Angeles-Yuma Freight Line and

there interlined with applicant for movement beyond to Tacna. The management company receives good transportation service from applicant and has no transportation complaints. The shipper represents that if it could obtain overnight service [104 M. C. C. 862] from Los Angeles, which service presently is not available, it could reduce its inventory of commodities required for farming about 33 percent.

Bruce Church Ranch, among other things, grows citrus and grapes at its White Wing Ranch, about 12 miles north of Dateland, Ariz., a point on U. S. Highway 80. Each week the ranch receives about three average 1,000-pound shipments of commodities used in its growing operation at the named ranch. The shipments originate principally at Los Angeles, Calif., and move by Los Angeles-Yuma to Yuma where they are interlined with the applicant for movement to distination. Shipments which originate on the lines of other carriers are also interlined with applicant at Yuma. The shipper is satisfied with its existing service, but nevertheless expresses need for single-line under applicant's proposed purchase of Los Angeles-Yuma and therefore supports the instant application. The ranch representative was uncertain as to the exact location of White Wing Ranch and whether transportation to the ranch is within the scope of the application cannot be determined from the evidence.

A salesman for Gotham Industries sells promotional plastic housewares to wholesale and retail establishments in the Phoenix area which commodities are shipped from Los Angeles to Phoenix, principally by LA-Yuma to Yuma and there interlined with applicant for delivery in Phoenix. Each week about three shipments, with an average value of $5,500, move from and to the described points. An expedited service, including Saturday service, is required by the shipper. During the year immediately preceding the hearing, about 70 percent of the shipments

have moved by the described carriers and 30 percent by Milne. That service has been satisfactory and the salesman supports the application because he desires the described service to continue. The shipper is aware there are at least nine other motor carriers rendering service between the described points whose services, if used, might be satisfactory. The salesman prefers the services of carriers he presently uses.

Circle K Tire Company of Phoenix, Ariz., ships tires several times each week from Phoenix to Imperial County and Los Angeles, Calif., area points, and from a Los Angeles warehouse to Phoenix. The shipments range in weight from 200 to 10,000 pounds. The shipper requires a 6-day weekly service and often needs expedited transportation. It has used most of the existing motor carriers, including interline service of Svensson and LA-Yuma, for the described transportation. It has used services of Svensson for about 18 years and supports the application because of excellent service which it has received from that carrier. It indicates it would continue using applicant's service from and to the proposed points if authorized. About one third of the shipper's involved traffic is presently being transported by Svensson.

Best Applicators of Arizona installs wallboard products and receives at Phoenix about two shipments of building materials such as wallboard, masonite, and adhesive from Ontario, Calif. The shipments range in weight from 600 to 2,000 pounds each. Some of the commodities are fragile and susceptible to damage in transit. The shipper requires a 24-hour origin-to-destination service with delivery on Saturday about once every 6 weeks. It has used applicant's interline service for movement of its commodities from and to the described points for about 5.5 months immediately prior to the hearing, and the service of Milne before that time. Service of the latter carrier generally has been satisfactory except that some damage

occurred in connection with shipments [104 M. C. C. 863] which it transported, that it delivers no shipments on Saturdays, and that it sometimes fails to provide a 24-hour service. If applicant could not provide the shipper required transportation, it indicates that it would use Milne or other existing carriers' services.

Reynolds Aluminum Supply Company of Phoenix is a wholesale distribution outlet for aluminum, steel, building, and industrial products. About once each month it ships some of these commodities from Phoenix to points in California, and about four times each week it ships these commodities from Los Angeles to Phoenix. About 75 tons of the steel and 25 tons of the aluminum commodities move each month from Los Angeles to Phoenix. The shipper requires expedited service and occasional Saturday deliveries when customers need commodities delivered on that day. About 90 percent of the involved traffic is moved by the connecting carrier services of LA-Yuma and Svensson, and the remaining 10 percent by Milne, Lee Way, and Western Gillette. This shipper would like to continue using applicant's services, but all the motor carrier transportation used by the shipper for movement of the described commodities has been satisfactory.

McGraw-Edison Company manufactures and distributes air coolers, generators, and parts of these commodities at Phoenix which are shipped daily to Calexico, Brawley, El Centro, or Sultan City, Calif. The shipper requires expedited transportation with Saturday deliveries once or twice each month. Thirty percent of the commodities are transported in the shipper's own truck equipment, and the balance by motor common carriers. One-half the remaining 70 percent is transported by applicant and its connecting carrier, through the Yuma gateway, and the balance is transported by Western Gillette, Lee Way, and Hopper. The shipper's private equipment moves its truckload traffic, and its less-than-truckload shipments are

tendered to other carriers. The common carrier service used by the shipper generally has been satisfactory for movement of large shipments but some delays have occurred in connection with the movement of some of its less-than-truckload shipments. While the joint-line service provided by Svensson and LA-Yuma has been satisfactory to the shipper, it nevertheless prefers the use of single-line service as proposed if the Svensson purchase of LA-Yuma is authorized.

C. H. Baker Shoe Store of Phoenix each week receives from Los Angeles about five shipments of shoes, shoe accessories, hosiery, bags, and polishes ranging in weight from 600 to 1,800 pounds each, and ships about three shipments of similar commodities from Phoenix to Los Angeles. It has used the joint-line services of Svensson and LA-Yuma exclusively during the 3 years preceding the hearing for the movement of those shipments. Prior thereto, Navajo transported its commodities but that carrier's service was too slow. The shipper is aware of other motor carriers which provide service between the described points but has requested none of their services because the carriers which it presently uses have been rendering satisfactory service.

PROTESTANTS' EVIDENCE

Navajo, a motor common carrier of general commodities operating over routes extending between California and Massachusetts, holds pertinent authority to operate over U. S. Highways 60 and 89, through Wickenburg, Ariz., [104 M. C. C. 864] between Los Angeles and Phoenix. It does not serve Yuma directly. It maintains terminals, among others, at Los Angeles and Phoenix, operates a large amount of truck equipment, and regularly provides general-commodity service at points on those routes. An abstract of shipments of the involved traffic transported by Navajo during a representative week of

April 17, 1967, reveals that it transported 163 shipments from the Los Angeles gateway point to Phoenix, and 133 shipments in the reverse direction. All except three of the shipments weighed less than 10,000 pounds each and the total weight of all the shipments was about 93.6 tons. Navajo opposes the application because of ample existing competitive motor carrier service between Phoenix and Los Angeles, and because of the competitive interline service provided by applicant which it believes to be of doubtful authenticity.

Western Gillette, a motor common carrier of general commodities over routes generally extending from Los Angeles to Chicago, as pertinent, operates over U. S. Highways 60 and 70, through Wickenburg, Ariz., over U. S. Highways 101 and 80, through San Diego, Calif., and Yuma, Ariz., and over U. S. Highways 60 and 80 and California Highway 86, through Indio and El Centro, Calif., between Los Angeles and Phoenix, serving off-route points within 10 miles of San Diego, and 25 miles of Yuma and Phoenix and many intermediate points along those routes. No service is authorized at intermediate points on U. S. Highway 80 between Yuma and Phoenix except those within 25 miles of both Phoenix and Yuma. This carrier also holds authority to transport general commodities, with certain exceptions, in truckloads of 10,000 pounds or more between points in Arizona on and south of U. S. Highway 66 and most of the involved California points. It maintains terminals at Los Angeles, Yuma, and Phoenix, and operates a large amount of truck equipment suitable for the involved transportation. At Los Angeles it operates 125 pickup and delivery vehicles, at Phoenix 67, and at Yuma 10. Overnight service, Monday through Friday of each week, is provided between Phoenix and Yuma. It serves the Yuma Test Station and San Luis daily. At San Luis its traffic is handled by the above-described supporting broker who employs only one per-

son there to receive freight. On a representative day, April 28, 1967, Western Gillette transported shipments weighing a total of about 117.8 tons from Phoenix to the Los Angeles commercial zone, shipments weighing about 45.6 tons from Yuma to the Los Angeles zone, shipments weighing about 124.3 tons from the Los Angeles zone to Phoenix, and shipments weighing about 5.5 tons from the Los Angeles zone to Yuma. During April 1967, it transported shipments weighing a total of about 37.7 tons from Phoenix to Yuma. Pickup and delivery service on Saturdays is provided only upon request of shippers because the cost of and demand for such service does not warrant a Saturday scheduled service. This carrier transports both less-than-truckload and truckload shipments, interlines freight with other motor carriers, and interchanges 27-foot trailers at El Centro, Calif., with Thompson Truck Line to provide service to and from the port of entry at Calexico, Calif., and Imperial County points. It opposes the application because its authorization in connection with the proposed purchase by applicant of LA-Yuma would establish a new single-line competitive service between Phoenix and Los Angeles, and would subject the substantial amount of traffic which this protestant transports between the involved points to diversion.

[104 M. C. C. 865] *Consolidated Copperstate* and its subsidiary Valley Motor Lines, a general-commodity motor carrier, operates over routes extending from Portland, Oreg., through California, Arizona (also from Salt Lake City through Arizona), New Mexico, and Texas, to Houston, Tex. It holds pertinent common carrier authority to transport general commodities, with usual exceptions, between Los Angeles and Phoenix, over U. S. Highway 70, serving all intermediate points and off-route points within 25 miles of the specified route, and also between those points over U. S. Highways 99 and 80, through Indio and El Centro, Calif., and Yuma and Gila Bend, Ariz., serving

all intermediate points. It maintains terminals at Los Angeles and Phoenix, and operates a large amount of truck equipment suitable for the involved transportation. It provides daily service between Los Angeles and Phoenix over U. S. Highway 70, and also between those points over U. S. Highways 99 and 80, but is unable to obtain sufficient traffic for movement over the latter route to warrant maintenance of a Yuma terminal and the rendering of direct service there. It now transports Yuma area traffic only to or from the Yuma Test Station which consists of explosives. It provides no direct service at intermediate points on U. S. Highway 80 between Yuma and Phoenix, except at Gila Bend. Shipments which it transports, destined to other points on the route, are interlined with Hopper. During February 1967, it transported 723 shipments (1,048.5 tons) from Phoenix to Los Angeles and 4,284 shipments (1,943 tons) in the reverse direction, and on May 2, 1967, it transported 53 shipments (25 tons) from Phoenix area points to Los Angeles area points, and 247 shipments (164.5 tons) in the reverse direction, all of which is representative of the involved traffic which it transports. It opposes the application because a grant of the requested authority would authorize a new competitive service, and because it is interested in obtaining additional traffic for movement to and from the involved points.

Thunderbird, a motor common carrier, holds authority to transport general commodities, with usual exceptions, between the Los Angeles and Los Angeles Harbor commercial zones and Phoenix over U. S. Highway 60, serving no intermediate points. It holds no authority to serve or operate through Yuma. It maintains terminals at Los Angeles and Phoenix, and operates 39 trucks, 70 tractors, and 132 trailers suitable for the proposed transportation. It provides daily service between Los Angeles and Phoenix, including a pickup and delivery service, 6 days each week, except that such service at Los Angeles on

Saturdays is provided only upon shippers' requests. It solicits and transports both truckload and less-than-truckload shipments. Representative of the traffic which it transports between the described points is that for January 5 and June 2, 1965 and 1966, and January 4, 1967, consisting of a total of 1,136 eastbound tons and 332 westbound tons. This carrier opposes the application because authorization of the requested authority in connection with approval of applicant's proposed purchase of LA-Yuma would authorize a new single-line Los Angeles-Phoenix competitive service. The carrier is ready to transport any traffic presently hauled by applicant which might be determined to be beyond the scope of its certificate of registration.

Milne, a motor common carrier, operates over routes generally extending through Colorado, New Mexico, Utah, and Arizona, and Southern California, Nevada, Idaho, and Wyoming. As pertinent, it holds authority to transport general commodities, with usual exceptions, between Phoenix and Los Angeles, through Indio, El Centro, and Yuma, over U. S. Highways 99 and 80, including [104 M. C. C. 866] service at intermediate points on U. S. Highway 80 in Arizona, points within 20 miles of Phoenix and within 10 miles of Yuma, and described Los Angeles Basin area points. It maintains terminals at Los Angeles and Phoenix, and operates 132 pickup and delivery trucks, 157 tractors, and 328 trailers suitable for the proposed transportation. It stations equipment at Los Angeles and Phoenix and provides pickup and delivery service at these points. It provides service between Los Angeles and Phoenix Monday and Friday of each week and Saturday upon request therefor. On April 13, 1967, it transported a shipment of aluminum extrusions from Los Angeles to Phoenix and Reynolds Aluminum Company. Also, on March 2, April 3 and 19, and May 3, 1967, it transported four less-than-truckload shipments for Best Applications

from Los Angeles to Phoenix. In each instance, the latter shipper was notified by telephone upon arrival of the shipment and it was picked up by the shipper. About 5 years prior to the hearing, its Yuma terminal was closed because sufficient traffic in that area to sustain the terminal was unavailable. It desires to reestablish that terminal. It indicates there is no need for the proposed service, and generally represents that applicant has established what it believes is an unauthorized competitive service from and to the involved points.

T. I. M. E., a motor common carrier of general commodities, operates over routes extending generally from San Francisco, through Los Angeles and Phoenix to Kansas City, Mo., Chicago, Ill., and Boston, Mass. As pertinent, it holds authority to transport general commodities between Los Angeles Basin area points and Phoenix, through Indio and Wickenburg, over U. S. Highways 99 and 70, and also through Indio, El Centro, and Yuma, over U. S. Highways 99 and 80, serving intermediate points. It performs a daily scheduled service over the Phoenix-Los Angeles route, through Wickenburg, and service upon request of shippers over the Phoenix-Los Angeles route through El Centro and Yuma. Traffic available to this carrier at points along the route through Yuma has been insufficient to warrant establishment of a Yuma terminal. T. I. M. E. maintains terminals at Los Angeles and Phoenix and operates a large amount of truck equipment suitable for the proposed transportation. It provides pickup and delivery service throughout the Phoenix and Los Angeles Basin areas Monday through Friday of each week, and service on Saturday upon request of shippers. No regular Saturday pickup and delivery service at those points is provided because the demand therefor and cost of such service are insufficient. A survey of shipments transported by the carrier from April 3 through 28, 1967, reveals a total movement of about 254.9 tons from Los

Angeles area points to Phoenix, and 21.8 tons in the reverse direction.

PMT, a wholly owned subsidiary of Southern Pacific Company, holds pertinent authority to transport general commodities, with usual exceptions, between Yuma and Phoenix, in interstate or foreign commerce, over U. S. Highway 80, serving all intermediate points and the off-route points of Roll, Jean, Tolleson, and Fowler, Ariz., restricted to pickup, delivery, and interchange of traffic only at points specified which are stations on the railroads, and subject to such future limitations imposed to insure service auxiliary to or supplemental of rail service. It also holds intrastate authority to operate between Phoenix and Yuma, including service at San Luis and Arizona Proving Grounds. No interstate authority is held to provide service between Los Angeles and Phoenix. It maintains terminals at Yuma and Phoenix, operates a large amount of truck equipment, and has provided service between those points for about 30 years. [104 M. C. C. 867] Pickup and delivery service is provided at those points 5 days each week, and Saturday service upon request therefor at Phoenix and 75 percent of the time at Yuma. Interlined freight is received from or delivered to other motor carriers at points along the described route. From April 3 through 28, 1967, it received 195 interstate shipments at Phoenix or Yuma which were delivered to Yuma and vicinity. Also, during the same time, it received 37 interstate shipments at Tucson which were delivered at Yuma or vicinity.

Hopper, a motor common carrier, holds pertinent authority to transport general commodities, except those of unusual value, dangerous explosives, household goods as defined by the Commission, commodities in bulk other than fruit and agricultural commodities, commodities requiring special equipment other than those requiring refrigeration

or specialized handling or rigging because of size or weight, and those injurious or contaminating to other lading, between Los Angeles and Phoenix, over U. S. Highways 99 and 80, through Indio, El Centro, and Yuma (also over U. S. Highways 99 and 60, through Indio and Wickenburg), serving intermediate points on those routes, off-route points in Arizona within 10 miles of the described routes, and off-route points within 15 miles of Truck Boulevard between Los Angeles and Los Angeles Harbor, Calif., with Yuma traffic restricted to that moving to or from points other than those in Imperial County, Calif., and with service between Los Angeles Harbor and Los Angeles restricted to traffic originating or destined to points east of Los Angeles on the described routes. No direct service is authorized at San Luis or Yuma Test Station. Hopper served the latter point for about 10 years under the mistaken belief that it held authority to serve that point. Service at the test station was discontinued by Hopper 2 days prior to the hearing. Hopper maintains terminals at Los Angeles, Yuma, and Phoenix, and operates 4 trucks, 28 tractors, and 97 trailers suitable for the proposed transportation. It provides overnight interstate scheduled service between Los Angeles and Phoenix, between Los Angeles and Yuma, and between Yuma and Phoenix. Forty pickup and delivery vehicles are maintained and operated in the Phoenix area and 50 in the Los Angeles area. Traffic studies by Hopper of the involved traffic reveals that during 1967, it transported a total of 13,910 interstate shipments (5,292.5 tons) from Los Angeles to Phoenix, 1,105 shipments (340 tons) from Los Angeles to Yuma, 1,360 shipments (1,228 tons) from Phoenix to Los Angeles, 211 shipments (667.5 tons) from Yuma to Los Angeles, and 301 shipments (59 tons) from Phoenix to Yuma. Pickup and delivery service is provided 6 days each week in the Phoenix area and 5 days each week at Yuma. Saturday service at Yuma and Los

Angeles is provided upon request therefor. Hopper represents that the application should be denied and applicant required to discontinue service along U. S. Highway 80 between Phoenix and Yuma, that in this event it will undertake to serve all intermediate and off-route points along that route within the scope of its operating authority, and that there is insufficient traffic moving to and from points along the route to justify such intermediate point service now. Both applicant and Western Gillette compete with Hopper for such traffic and Hopper transports about two shipments daily moving to or from points along the route. Hopper opposes the proposal because it believes no true conversion request is contained in the application, because applicant seeks authority other than that authorized in its certificate of registration, and because authorization of the proposal in connection with applicant's requested purchase of LA-Yuma would create a new competitive single-line service between Los Angeles and Phoenix.

[104 M. C. C. 868]

DISCUSSION AND CONCLUSIONS

In a true conversion proceeding, under section 207 of the Interstate Commerce Act, a certificate may be issued upon a showing that the applicant is fit, willing, and able to perform the service proposed and comply with provisions of the act and regulations of the Commission, and that the proposed service will be required by the present and future public convenience and necessity. The burden of showing convenience and necessity may be met in two ways. One, through evidence of past lawful operations conducted in interstate commerce under the certificate of registration, and the other, through evidence of need for the proposed transportation elicited from shipper witnesses. See *Worster—Control—McKay & MacLeod Corp.*, 85 M. C. C. 679, 686, and *Delta Lines, Inc.—Control and Merger*, 97 M. C. C. 411, 421. However, applicant pro-

poses no true conversion of its certificate of registration, for the proposed authority differs in at least some respects from that contained in the certificate of registration for which no evidence relating to State interpretation was presented. For example, there is no clear indication that any of applicant's operations from Yuma to Phoenix are authorized, or if authorized, the conditions under which service may be performed, if any. Also, applicant requests authority to serve intermediate points along a described portion of one of the proposed routes and four specified off-route points, which differs materially from service at points within the Mohawk Valley as defined in the certificate of registration. Therefore, evidence of applicant's past operations has no significant probative value for a determination here. Also, the evidence of need presented through the 10 described shippers, is considered insufficient to warrant authorization of the proposed service in view of evidence presented by the protestants. The service of existing motor carriers, much of which has not been tried by the supporting shippers, is considered more than ample to meet all their transportation needs. In view of these conclusions, no consideration of the issue of fitness is necessary here, except to say that the fitness of applicant is subject to question in view of the board's findings in its recommended report served concurrently herewith in the complaints proceeding, No. MC-C-5262. Accordingly, the application should be denied.

FINDINGS

Upon consideration of all evidence of record, the joint board finds that public convenience and necessity do not require the operation for which authority is sought, and that the application should be denied.

In view of the findings, the joint board recommends that the appended order (not printed) be entered.